2015

Sean Kendall, Plaintiff/Appellant, v Brett Olsen, Lt. Brian Purvis, Joseph Allen Everett, Tom Edmundson, George S. Pregman and Salt Lake City Corporation, Defendants/Appellees

Utah Court of Appeals

No. 20150927-CA

IN THE UTAH COURT OF APPEALS

SEAN KENDALL,
Plaintiff/Appellant,

vs.

BRETT OLSEN, LT. BRIAN PURVIS, JOSEPH ALLEN EVERETT, TOM EDMUNDSON, GEORGE S. PREGMAN and SALT LAKE CITY CORPORATION,
Defendants/Appellees.

On Appeal from the Third Judicial District Court,
Salt Lake County, State of Utah, Case No. 150900558
The Honorable Heather Brereton and William Barrett

STATE OF UTAH'S BRIEF ON CONSTITUTIONALITY OF Utah Code Section 63G-7-601

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

Other Authorities

The Utah Attorney General submits this brief defending the constitutionality of Utah Code Ann. § 63G-7-601 ("the undertaking statute"). *See generally* Utah Code Ann. § 78B-6-403(3); Utah R. Civ. P. 24(d)(1). The Attorney General also submitted a brief in the trial court.[1]

BACKGROUND

The undertaking statute provides:

> **§ 63G-7-601. Actions governed by Utah Rules of Civil Procedure--Undertaking Required**
>
> (1) An action brought under this chapter shall be governed by the Utah Rules of Civil Procedure to the extent that they are consistent with this chapter.
>
> (2) At the time the action is filed, the plaintiff shall file an undertaking in a sum fixed by the court that is:
>
> (a) not less than $300; and
>
> (b) conditioned upon payment by the plaintiff of taxable costs incurred by the governmental entity in the action if the plaintiff fails to prosecute the action or fails to recover judgment.

Utah Code Ann. § 63G-7-601.

This unremarkable statute, which is part of the Utah Governmental Immunity Act (Utah Code Ann. §§ 63G-7-101, *et seq.*),

[1] The State of Utah's Position Regarding the Constitutionality of Utah Code Ann. § 63G-7-601. (R. 436-447).

requires only that a plaintiff bringing an action against a Utah governmental entity file an undertaking of at least $300 when the action is filed.[2, 3] The express purpose of the undertaking is to assure that, "if the plaintiff fails to prosecute the action or fails to recover judgment," the "taxable costs incurred by the governmental entity in the action" will be

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[2] Although the statute provides that the amount of the undertaking can be "fixed by the court," in practice it is the experience of the Attorney General's Office that an amount greater than $300 is seldom, if ever, sought.

[3] The U.S. District Court in Utah has adopted a local rule, Rule DUCivR 67-1(c), which addresses the requirements of Utah Code Ann. § 63G-7-601:

> **FED. R. CIV. P. 67 - DEPOSIT IN COURT**
> **DUCivR 67-1 RECEIPT AND DEPOSIT OF REGISTRY FUNDS**
>
> …
>
> **(c) Deposit of Required Undertaking or Bond in Civil Actions.**
>
> In any case involving a civil action against the State of Utah, its officers, or its governmental entities, for which the filing of a written undertaking or cost bond is required by state law as a condition of proceeding with such an action, the clerk of court may accept an undertaking or bond at the time the complaint is filed in an amount not less than $300.00. The court may review, fix, and adjust the amount of the required undertaking or bond as provided by law. The court may dismiss without prejudice any applicable case in which the required undertaking or bond is not timely filed.

paid. Utah Code Ann. § 63G-7-601. The "costs incurred by the governmental entity" in this context and for which the legislature has provided protection are, of course, public funds. If the plaintiff prevails, or even if the plaintiff loses but pays the taxable costs, the $300 would be refundable. In other words, unlike a filing fee that is not refundable, if a plaintiff simply fulfills his wholly reasonable responsibility of paying taxable costs, he gets his $300 back. The statute also expressly provides that actions subject to the $300 undertaking requirement are governed by the Utah Rules of Civil Procedure, rules designed to provide due process protections to litigants. *Id.*

The undertaking statute is in many ways similar to Utah Rule of Civil Procedure 12(j), which provides:

> **RULE 12. DEFENSES AND OBJECTIONS**
>
> * * * *
>
> **(j) Security for costs of a nonresident plaintiff.** When the plaintiff in an action resides out of this state, or is a foreign corporation, the defendant may file a motion to require the plaintiff to furnish security for costs and charges which may be awarded against such plaintiff. Upon hearing and determination by the court of the reasonable necessity therefor, the court shall order the plaintiff to file a $300.00 undertaking with sufficient sureties as security for payment of such costs and charges as may be awarded against such plaintiff. No security shall be required of any officer,

instrumentality, or agency of the United States.

Utah R. Civ. P. 12(j). The Utah Supreme Court has held that the same policy—"discouraging nuisance suits"— supports both the undertaking statute (Utah Code Ann. § 63G-7-601) and the Rule 12(j) cost bond requirement for non-resident plaintiffs. *Hansen v. Salt Lake Cnty.*, 794 P.2d 838, 840 (Utah 1990).

The Governmental Immunity Act has included this same undertaking requirement from the very beginning. *See* 1965 Utah Laws 390, 393-94. And, remarkably, the minimum amount due—$300—has remained the same for the past 50 years. *Id.* Whatever burden a $300 undertaking may have imposed in 1965, the requirement now presents no more than a speed bump on an individual's way to filing a lawsuit against the government.

The undertaking statute is constitutional and withstands Kendall's claims.

STANDARDS OF REVIEW

A trial court's determinations of the legal requirements for standing are reviewed for correctness. *Jones v. Barlow*, 2007 UT 20, ¶

10, 154 P.3d 808. A challenged statute is presumed to be constitutional and any reasonable doubts are resolved in favor of constitutionality. *Tindley v. Salt Lake City Sch. Dist*., 2005 UT 30, ¶ 11, 116 P.3d 295. Plaintiff bears the burden of overcoming the presumption of constitutionality. Further, since he is "willing" and "able" to file the $300 undertaking, his challenge should be treated as a facial constitutional challenge, which requires him to "establish that no set of circumstances exists under which the [statute] would be valid." *State v. Herrera*, 1999 UT 64, n.2, 993 P.2d 854 (quoting *United States v. Salerno*, 481 U.S. 739, 745 (1987)); *see also Gillmor v. Summit Cnty.*, 2010 UT 69, ¶ 27, 246 P.3d 102 ("in asserting a facial challenge, [a] party avers that the statute is so constitutionally flawed that no set of circumstances exists under which the [statute] would be valid").

ARGUMENT

I. Because Appellant Kendall Lacks Standing, This Court Should Not Reach the Question of the Constitutionality of Utah Code Ann. § 63G-7-601.

Surprisingly, given the challenge he asserts, Appellant Kendall does not claim he cannot afford to file, or that he refuses to file, the

(potentially refundable) $300 undertaking: "I am willing and able to post $300 to satisfy the cost undertaking statute, if that is the amount set by the Court."[4] Appellee Salt Lake City Corporation does not seek "an undertaking of more than $300."[5] And, the trial court, in fact, set the undertaking amount at $300.[6] Given those undisputed facts, Kendall lacks standing to challenge the undertaking statute. "[A] challenge to standing is jurisdictional and may be brought at any stage of the litigation." *Brown v. Dep't of Natural Res.*, 2010 UT 14, ¶ 15, 228 P.3d 747.

In *Hoyle v. Monson*,[7] the Utah Supreme Court stated:

> The right and power of the judiciary to declare whether legislative enactments exceed constitutional limitations is to be exercised with considerable restraint and in conformity with fundamental rules. One such fundamental rule of

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[4] Revised Affidavit of Sean Kendall at 8, ¶ 43. (R. 496).

[5] Defendant Salt Lake City Corporation's Opposition to Plaintiff's Motion for Summary Judgment at 17. (R. 339).

[6] "Plaintiff is required to file an undertaking in an amount of $300." Order at 2. (R. 581).

[7] 606 P.2d 240 (Utah 1980). Interestingly, *Hoyle* was *also* litigated by Appellant's counsel in this case.

> long-standing is that unnecessary decisions are to be avoided and that the courts should pass upon the constitutionality of a statute only when such a determination is essential to the decision in a case. A constitutional question does not arise merely because it is raised and a decision is sought thereon; rather, the constitutionality of a statute is to be considered in the light of the *standing* of the one who seeks to raise the question and of its particular application. *An attack on the validity of a statute cannot be made by parties whose interests have not been, and are not about to be, prejudiced by the operation of the statute*.

Id. at 242 (emphasis added).

In *Hoyle*, the Court was faced with a challenge that turned on the ability of the plaintiffs to pay a statutorily required amount.[8] Because the plaintiffs were, in fact, able to pay, the Utah Supreme Court held "it was not necessary for the trial court nor is it now necessary for this Court to reach the question as to the constitutionality of the filing fee provision, for the plaintiffs lack standing." *Id*. at 242.

The same is true here. Appellant does not have standing to challenge the undertaking statute and this Court should not reach the question of the constitutionality of Utah Code Ann. § 67G-7-601.

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[8] In *Hoyle,* the plaintiffs challenged the constitutionality of a statute requiring payment of a filing fee to become a candidate for office. *Id.* at 241.

II. The Undertaking Statute Does Not Violate Equal Protection.

Though stated differently, both the Utah and U.S. Constitutions "incorporate the [b]asic principles of equal protection." *Gallivan v. Walker*, 2002 UT 89, ¶ 32, 54 P.3d 1069 (internal quotation marks omitted). While sharing fundamental principles, Utah's uniform operation of laws provision may at times be more rigorous than its federal equal protection counterpart. *Id.* at ¶ 33. Thus, if the undertaking statute satisfies the uniform operation of law provision, it necessarily passes muster under the Equal Protection Clause.

This case does not present a situation where Kendall is denied access to the courts by operation of the undertaking statute. Here, Kendall does not claim that he is either unable or unwilling to pay the $300 undertaking. Kendall has averred that he is "willing and able to post $300 to satisfy the cost undertaking statute."[9] The question in this case is whether the undertaking requirement violates the equal protection rights of persons who are able and willing to pay the

[9] Revised Affidavit of Sean Kendall at 8, ¶ 43. (R. 496).

undertaking.[10] Because the undertaking statute does not implicate either a suspect class or a fundamental right and does not seriously impede access to the courts, heightened scrutiny analysis is not warranted. *Gallivan*, 2002 UT 89 at ¶ 40; *Judd v. Drezga*, 2004 UT 91, ¶ 19, 103 P.3d 135.

Under rational basis review, "any rational or 'reasonable' basis for legislative classification is sufficient, meaning that any 'legitimate' governmental objective suffices, and any 'reasonable relationship' between classification and purpose is adequate." *DIRECTV v. Utah State Tax Comm'n*, 2015 UT 93, ¶ 51, 364 P.2d 1036 (quoting *Merrill v. Utah Labor Comm'n*, 2009 UT 26, ¶ 9, 223 P.3d 1089).

Here, the undertaking statute, serves at least two legitimate government interests: (1) discouraging nuisance suits against governmental entities, and (2) assuring that at least some minimal amount of taxable costs incurred by the government will be paid. The Utah Supreme Court has already recognized the relationship between

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[10] Kendall makes no argument, and there is none, that the undertaking statute does not operate equally on all similarly situated persons (*e.g.*, only some people who sue the government must file an undertaking while other government claimants need not do so).

the undertaking requirement and discouraging nuisance suits. *Hansen,* 794 P.2d at 840 ("The policy of discouraging nuisance suits . . . supports the undertaking requirement"). And, the relationship between the undertaking requirement and assuring payment of taxable costs is self-evident.[11]

With the exception of only one case, the cases Kendall cites do not address the issue of protecting public funds by requiring an undertaking for taxable costs in suits against a government entity. *See* Appellant's Brief at 22-28. The cases are inapposite. *Detraz v. Fontana*,[12] a Louisiana case, dealt with a statute requiring a bond for attorney fees, *not costs*, and a trial court order to post an attorney fee bond in the amount of $15,000. *Patrick v. Lynden Transport, Inc.*,[13] an Alaska case, dealt with a statute requiring an out-of-state plaintiff to post a bond for

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[11] Even under a heightened scrutiny review, the undertaking statute is reasonable, and it substantially furthers and is reasonably necessary to the legislative goals of protecting public funds. *See Judd*, 2004 UT 91 (discussing and applying heightened scrutiny in the context of a medical malpractice statutory damages cap).

[12] 416 So.2d 1291 (La. 1982).

[13] 765 P.2d 1375 (Alaska 1988).

costs *and attorney fees*, and a trial court order to post bond in the amount of $5,000. *Lindsey v. Normet*[14] dealt with an Oregon wrongful detainer statute that required a losing tenant to post a bond on appeal, *not for costs*, from an adverse decision in twice the amount of the rent expected to accrue pending an appellate decision. There, the United States Supreme Court found the subject statute unconstitutional because it was "unrelated to actual rent accrued or to specific damage sustained by the landlord." *Id.* at 77. *Eastin v. Broomfield*,[15] an Arizona case, dealt with a medical malpractice act statute requiring a $2,000 bond for costs, *and attorney fees*, to be posted before filing suit by the non-prevailing party after medical panel review.

Only *New v. Arizona Board of Regents*,[16] another Arizona case, dealt with a cost bond requirement in a suit against a state. But even *New* is distinguishable. There, Arizona's $500 bond requirement was found by the Arizona Court of Appeals to not comply with the Arizona

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[14] 405 U.S. 56 (1972).

[15] 570 P.2d 744 (Ariz. 1977).

[16] 618 P.2d 238 (Ariz. Ct. App. 1980).

constitution's "privileges and immunities" clause, a clause not found in and substantially different than any in the Utah Constitution.[17] In *New*, disagreeing with the majority opinion, Presiding Judge Wren dissented and found dispositive the difference between a bond requirement in a suit between private parties and a bond requirement in a suit against a public entity and involving public funds.[18]

The same distinction exists here. Kendall's claim is against public entities and involves public funds. The undertaking is rationally related to legitimate state interests in discouraging frivolous suits and recouping costs incurred in defending against such suits, which is all the Constitution requires in this context. *See, e.g., M.L.B. v. S.L.J.*, 519

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[17] Arizona's privileges and immunities clause states:

> § 13. Equal privileges and immunities
>
> Section 13. No law shall be enacted granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which, upon the same terms, shall not equally belong to all citizens or corporations.

Ariz. Const. art. 2, § 13.

[18] "[T]here is a substantial distinction between a non-waivable cost bond in medical malpractice litigation which involves only private parties and a suit against a public entity such as the Board of Regents which of necessity involves public funds." *New*, 618 P.2d at 240.

U.S. 102, 123 (1996) (emphasizing "the general rule" that "fee requirements ordinarily are examined only for rationality. . . . [and] [t]he State's need for revenue to offset costs, in the mine run of cases, satisfies the rationality requirement.").

III. The Undertaking Statute Does Not Violate Either the Open Courts or the Petition Clauses.

The Utah Supreme Court has observed that "[s]overeign immunity—the principle that the state cannot be sued in its own courts without its consent—was a well-settled principle of American common law at the time Utah became a state." *Madsen v. Borthick*, 658 P.2d 627, 629 (Utah 1983). And, "[b]efore the Utah Governmental Immunity Act was passed in 1965, Utah adhered to the common law doctrine of sovereign immunity." *Hansen*, 794 P.2d at 842. The Open Court's Clause of the Utah Constitution, Article I, § 11, "worked no change in the principle of sovereign immunity, and sovereign immunity is not unconstitutional under that section." *Madsen*, 658 P.2d at 629.

"Article I, § 11 of the Utah Constitution … was not meant to create a new remedy or a new right of action." *Id.* The Utah Supreme Court

has held that the Open Courts Clause (Art. I, § 11) "applies only to legislation which 'abrogates a cause of action existing at the time of its enactment.'" *Tindley*, 2005 UT 30 at ¶ 17 (quoting *Laney v. Fairview City*, 2002 UT 79, ¶ 50, 57 P.3d 1007). "The legislature … remains free to abrogate or limit claims that could not have been brought under then-existing law." *Id.* And, even abrogation of a legal remedy is acceptable if legislation "provides an injured person an effective and reasonable alternative remedy" or seeks to eliminate "a clear social or economic evil" as long as it is not "an arbitrary or unreasonable means for achieving that objective." *Id.* at ¶ 18 (quoting *Berry ex rel. Berry v. Beech Aircraft Corp.*, 717 P.2d 670, 680 (Utah 1985)).

Here, the undertaking statute abrogates no cause of action. Instead, the undertaking statute assures that taxable costs incurred will be paid and, as the Utah Supreme Court has noted, the undertaking statute furthers the policy of "discouraging nuisance suits." *Hansen*, 794 P.2d at 840.

To prop up his Open Courts Clause argument, Kendall relies on the Florida case of *Psychiatric Associates v. Siegel*.[19] *See* Appellant's Brief at 34-35. But this reliance is misplaced. The statute at issue there was not part of Florida's governmental immunity act, but instead Florida's Legislature enacted it in response to "the growing medical malpractice crisis." *Id.* at 423. Further, the statute required the posting of "bond sufficient to cover the defendant's costs *and attorney's fees*." *Id.* at 421 (emphasis added). In fact, the bond required in the *Psychiatric Associates* case was $30,000—one hundred times the Utah undertaking requirement of $300. *Id.* at 422.[20]

In contrast to the Florida statute, the Utah undertaking statute does not require an amount "sufficient to cover the defendant's costs." Nor does the Utah statute include any requirement for "attorney's fees."

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[19] 610 So.2d 419 (Fla. 1992), *receded from on other grounds in Agency for Health Care Admin. v. Assoc. Indus. of Fla. Inc.*, 678 So.2d 1239 (Fla. 1996).

[20] Florida's own courts have found that "the *amount* of the bond affected the court's decision in *Psychiatric Associates*." *Achord v. Osceola Farms Co.*, 52 So.3d 699, 703 (Fla. Dist. Ct. App. 2010) (finding a $100 non-resident cost bond statute constitutional).

As pointed out above, although the statute provides that the undertaking amount can be "fixed by the court," in practice it is the experience of the Attorney General's Office that an amount greater than $300 is seldom, if ever, sought.

Kendall's Petition Clause argument, *see* Appellant's Brief at 29, also fails because the undertaking has not denied him (or anyone else) the right of access to the courts or to petition the government. Moreover, the undertaking is rationally related to legitimate state interests in discouraging frivolous suits and recouping costs incurred in defending against such suits, which is all the Constitution requires. *See, e.g., M.L.B.*, 519 U.S. at 123 (emphasizing "the general rule" that "fee requirements ordinarily are examined only for rationality. . . . [and] [t]he State's need for revenue to offset costs, in the mine run of cases, satisfies the rationality requirement.").

IV. The Undertaking Statute Does Not Violate Substantive or Procedural Due Process.

The undertaking statute must be upheld so long as "it is rationally related to a legitimate state interest." *State v. Candedo*, 2010 UT 32, ¶

19, 232 P.3d 1008. As noted above, the requirement serves at least two legitimate government interests: (1) discouraging nuisance suits, and (2) ensuring that the government will recoup at least some minimal amount of costs should a plaintiff file a frivolous suit anyway.

Again, Kendall's s reliance, but in the context of due process, on *Psychiatric Associates*, *Lindsey*, and *Detraz* is misplaced. *See* Appellant's Brief at 34-35. None of those cases deal with the issue of protecting public funds by requiring an undertaking for taxable costs in suits against a government entity. They are not applicable here.

Kendall's argument that the undertaking statute does not provide any reasonable guidance for a court to determine the appropriate amount of an undertaking ignores reality and the law. Substantive due process does not require that every statute detail exactly how any tribunal must make a decision applying the statute. The Utah Supreme Court has already addressed this argument in the context of the bond statute in *Zamora v. Draper*, 635 P.2d 78, 81 (Utah 1981). There, the Court reasoned:

> The courts have the means at their command of conducting appropriate preliminary procedures to make a determination

> on . . . whether the plaintiff is in fact impecunious and unable to furnish the bond. As to the latter, it is significant that the statute itself allows some flexibility wherein it provides that the bond shall be "in an amount fixed by the court ...." This would permit the court to fix the bond in accordance with the plaintiff's circumstances, however impoverished he may be, and yet allow him access to the court to seek justice . . . .

Id. The same reasoning applies to the undertaking statute, which also authorizes a "sum fixed by the court." Utah Code Ann. § 63G-7-601(2). In fact, the Utah federal district court's local rule applying to Utah Code Ann. § 63G-7-601 expressly recognizes that "[t]he court may review, fix, and adjust the amount of the required undertaking or bond as provided by law."[21] In short, courts do not need any more guidance on how to appropriately apply the undertaking statute.

Kendall cites Utah cases, *Miller v. USAA Cas. Ins. Co.*,[22] and *Payne v. Myers*,[23] as support for his argument that he has a protected property right. *See* Appellant's Brief at 40. But neither case addresses nor establishes that a plaintiff even has a protected property

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[21] Rule DUCivR 67-1(c), quoted in footnote 3 above.

[22] 2002 UT 6, 44 P.3d 663.

[23] 743 P.2d 186, 190 (Utah 1987).

right to sue a governmental entity without complying with the undertaking requirement of the Utah Governmental Immunity Act. The Utah Supreme Court has consistently interpreted the Immunity Act to require strict compliance by plaintiffs. *Davis v. Central Utah Counseling Ctr.*, 2006 UT 52, ¶ 40, 147 P.3d 390. In *Davis*, the Court explained that the "allowance of a claim against [a governmental entity] is a statutorily created exception to the Doctrine of Sovereign Immunity. Inasmuch as the maintenance of such a cause of action derives from such statutory authority, a prerequisite thereto is meeting the conditions prescribed in the statute." *Id.* (quotation omitted).

Further, although a plaintiff may have a protected property right in a vested cause of action, the requirement of filing a $300 (potentially refundable) undertaking—to assure that, "if the plaintiff fails to prosecute the action or fails to recover judgment," the "taxable costs incurred by the governmental entity in the action" will be paid—does not constitute an unconstitutional taking. The very fact that the undertaking is refundable, if the plaintiff prevails or, conversely, is properly due for taxable costs, if the plaintiff fails to prosecute or fails to

recover judgment, should make clear that the undertaking requirement is not a taking of a vested property right.

Kendall relies on a California case, *Beaudreau v. Superior Court*,[24] to support his takings argument. *See* Appellant's Brief at 41-42. But that case has been roundly criticized[25] and its analysis has not been widely adopted. *Beaudreau* dealt with a statute requiring a cost bond in a suit against the Los Angeles Unified School District. The trial court set the bond amount at $20,900.[26] On appeal, California's Supreme Court found the bond requirement an unconstitutional taking. *Beaudreau*, 535 P.2d at 724.

The California court did not find that the bond violated equal protection. In fact, to the contrary, the court found the bond *satisfied* equal protection standards:

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[24] 535 P.2d 713 (Cal. 1975).

[25] *Constitutional Law-Due Process-Statute Requiring Plaintiffs to Post Security for Costs Held Violation of Procedural Due Process*, 89 Harv. L. Rev. 1006, 1008 (1976).

[26] Again, as in essentially all of the cases Kendall cites , the amount at issue in *Beaudreau* was significantly more than Utah's $300 undertaking requirement.

> We do not dispute that the state has a legitimate interest in protecting public entities and their employees against frivolous lawsuits. Nor do we necessarily find fault with the statutory classification distinguishing between plaintiffs on the basis of whether the parties they sue are public entities or public employees rather than private persons. The Legislature may have had reason to believe that there exists a greater danger of unfounded actions against public, rather than private parties. . . . We do not say that the requirement of an undertaking is an improper method of effectuating this purpose.

Beaudreau, 535 P.2d at 721 (internal citation omitted).

Instead, the court held that the cost bond constituted a taking without adequate due process. Yet, the California court's finding that the cost of process is a protected property right differs from other jurisdictions. Among the serious criticisms of *Beaudreau* is that "[t]he court's analysis of the taking issue was unduly superficial" and that the court extended due process protection, not only to a person's interest in a cause of action, but to the cost of process in prosecuting that cause of action.[27]

But here, the bond can be refunded. And there is no unconstitutional taking. The undertaking is rationally related to

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[27] *Constitutional Law-Due Process-Statute Requiring Plaintiffs to Post Security for Costs Held Violation of Procedural Due Process*, 89 Harv. L. Rev. 1006, 1008, 110-116 (1976).

legitimate state interests in protecting public funds by discouraging frivolous suits and recouping costs incurred in defending against such suits, which is all the Constitution requires.

CONCLUSION

Utah Code Ann. § 63G-7-601—the longstanding undertaking requirement of the Utah Governmental Immunity Act—is permissible under, and does not violate either the United States Constitution or the Utah Constitution.

Respectfully submitted this 8th day of June, 2016.

Office of the Utah Attorney General

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CERTIFICATE OF COMPLIANCE WITH RULE 24(f)(1)

1. This brief complies with the type-volume limitation of Utah R. App. P. 24(f)(1) because:

   · this brief contains 3,587 words, excluding the parts of the brief exempted by Utah R. App. P. 24(f)(1)(B).

2. This brief complies with the typeface requirements of Utah R. App. P. 27(b) because:

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Assistant Utah Attorney General

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of June, 2016, a true and correct original and the required number of copies, along with electronic .pdf copy on CD, of the foregoing **STATE OF UTAH'S BRIEF ON CONSTITUTIONALITY OF UTAH CODE ANNOTATED SECTION 63G-7-601** were filed with the court, and that two copies and a CD were placed in outgoing United States mail, postage pre-paid, as follows:

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